IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1205 OF 1987

1. Pandurang Tukaram Mohite,

2. Dinkar Tukaram Mohite ... Petitioners

versus

1. Jagadeo Annasaheb Ghorpade,
since deceased, by his heirs
and legal representatives :
a) Sow.Bai Hanamantrao Nigade,
b) Sow.Aruna Dattatraya
Nigade,
c) Sow.Mangal Ashokrao
Phadtare,
d) Yeshwant Jagdeorao
Ghorpade,
e) Manshingh Jagdeorao
Ghorpade,
f) Ganpat @ Popat Jagdeorao
Ghorpade,
g) Mohan Jagdeorao Ghorpade,
h) Bhimrao Jagdeorao Ghorpade;

2. Fakira Kashaba Ghorpade;

3. Ramchandra Namdeo Wagh, since
   deceased, by his heirs and
   legal representatives :
   a) Smt.Vatsala Ramchandra
      Wagh,
   b) Mohan Ramchandra Wagh,
   c) Vilas Ramchandra Wagh,
   d) Ravi Ramchandra Wagh,
   e) Balu Ramchandra Wagh,
   f) Sou. Vimal Alande,
   g) S. R. Tatpuje,
   h) Kamal V. Taralkar;
4. Kisan Vishnu Tatpuje (Wagh);
5. Dattatraya Maruti Tatpuje
6. Shankar Tukaram Tatpuje ... Respondents

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Mrs. Anjali Hekar for Mr. S.M. Dharap, for the Petitioner.

Writ Petition stands dismissed as against Respondents Nos. 1(a), 1(d), 4 and 6.

Respondents Nos. 1(b), 1(c), 1(e) to (h), 2, 3(a) to (h) and 5 absent, though served.

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CORAM : A.M.KHANWILKAR,J.

11th June 2004

ORAL JUDGMENT :

01. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order dated March 10, 1986 in Revision No.MRT/NS/X/13/73(TEN.A.279/A/73) passed by the Maharashtra Revenue Tribunal, Pune. Briefly stated, the Respondents Nos. 1 and 2 claiming to be tenants in respect of the suit land filed application before the Tenancy authority under section 70(b) of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act"). The Tenancy authority upon considering the documentary as well as oral evidence on record answered the said application in favour of the tenants holding that original Respondent No. 1 was tenant in land bearing Survey Nos. 332/4, 320/3, 320/4 and 321; and Respondent No. 2 was tenant in Survey No. 352/4D situated at village Bhadale, taluka Kopargaon, district Satara. Recording that declaration, the Tenancy authority directed

initiation of proceedings under section 32G of the Act for determination of purchase price. Against this decision, the Petitioner carried the matter in appeal before the Special Deputy Collector, Tenancy Appeals, Satara. The said appeal, however, came to be dismissed by a judgment and order dated July 31, 1973. On reading the said decision, it appears that grievance was made on behalf of the Petitioner that there was neither documentary evidence nor oral evidence to support the claim of the Respondents that they were tenants in the suit lands as claimed by them. However, the appellate Court answered the appeal against the Petitioner. Against that decision, the Petitioner had carried the matter in revision. Separate revision was filed by Respondents Nos. 4 and 5. However, the revisional authority once again by elaborate and well-reasoned judgment dismissed both the revision applications, upholding the view taken by the first authority as referred to above. The revisional authority has adverted to entire documentary as well as oral evidence to uphold the view taken by the first authority, which was also confirmed by the appellate authority, but

with a very cryptic judgment. This decision is subject matter of challenge in the present writ petition.

02. Learned Counsel contends that it was not open to the revisional authority to re-appreciate the evidence on record while exercising powers under section 76 of the Act. Besides, it is contended that the main basis and the approach of the revisional authority is manifestly wrong because the decision of this Court in civil proceedings between the parties was not brought on record and it was not open to the revisional authority to consider the said decision being inadmissible. It is also contended that the two authorities below have passed cryptic decisions without evaluating the evidence on record and for which reason, the appropriate course, if at all, was to remand the matter to the first authority or, at least, to the appellate authority, for re-examination of the case in accordance with law.

03. None appears for the Respondents.

04. Having considered the submissions advanced on behalf of the Petitioner and on going through the records, I have no hesitation in taking the view that there is no substance in this writ petition. As regards the first grievance made on behalf of the Petitioners about the exercise of powers under section 76 of the Act, this submission clearly overlooks the fact that the revisional authority has upheld the view taken by the first authority, may be has given better reasons to support the conclusion reached by the first authority. If that is the course adopted by the revisional authority, it is not a case of decision in excess of jurisdiction, but within jurisdiction. The revisional authority cannot be blamed for having adverted to entire materials on record, so as to affirm the conclusions reached by the two authorities below. It is not the grievance of the Petitioner that the materials referred to in the impugned judgment are not forming part of the record as such. In the circumstances, I find no substance in the first grievance agitated on behalf of the Petitioner.

05. Insofar as the evaluation of materials on record done by the revisional authority is concerned, the same cannot be faulted. It has rightly adverted to all the materials including the decision of this Court, which was binding between the parties as it is seen that the suit was between the landlord and the tenants were defendants in the suit. If that was so, obviously such a decision would be binding inter se the parties and so also bind the tenancy authority, which was called upon to examine the point in issue. In my view, no fault can be found with the authorities below in considering the decision of this Court in earlier proceedings arising from the civil suit between the parties.

06. That takes me to the alternative contention canvassed on behalf of the Petitioner that the revisional authority at best should have remanded the matter to the lower authorities. I find no reason to accept even this submission. It is seen that the first authority has referred to the necessary material, which has been reiterated by the revisional authority. It is

not a case where the decision has been reached by the first authority without reference to the materials on record. As mentioned earlier, the revisional authority has only given better reasons to confirm the view taken by the two authorities below. Viewed in this perspective, there was no reason to direct remand of the proceedings, as the conclusion reached by the authorities below was unassailable. Accordingly, this petition fails and the same is dismissed. Rule discharged, with no order as to costs.

07. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

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